THE ROLE OF THE ARBITRATION PROCESS IN
CHANGING MENTAL ILLNESS AND MENTAL
RETARDATION SYSTEMS

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Arbitration cases involving misconduct, incompetence and neglect by hospital staff can be analyzed to improve institutional management and quality of care, and help prevent patient abuse. Along with other data, facts presented in arbitration reports can indicate, for example, categories of employees, circumstances, work conditions and procedures which tend to create disciplinary problems. A design for managerial analysis of arbitration decisions is described, and a proposal for corrective action and better supervision is offered to mental health administrators.

CASE SUMMARIES

In October 1979, Stuart M., a mental hygiene therapy aide at the Harlem Valley Psychiatric Center was served with a notice of discipline charging that he had "physically abused patient Charles R. by slapping him about the face a number of times and grabbing him about the neck in a choking manner." Also, an inappropriate use of authority was charged in that a PRN order of 100 milligrams of Thorazine for agitation was given for another patient when sufficient reason was not evident.

The State seeks termination for such misconduct. At the hearing both parties agreed to change the first charge to "poor judgment" by handling R. in an "extremely rough and unnecessary manner" and the penalty requested was a five-day suspension without pay. The second charge was dropped.

The State acknowledged that the task of employees in psychiatric hospitals is often trying and frustrating, but the State maintains that this is the nature of the job and that employees should act appropriately. The State further contends that the ward jobs are never purported to parallel those of a general hospital which is why a higher tolerance for frustration and more physical demands are placed on its employees. The State also argues that employees are aware of the conditions when they accept employment and are compensated commensurate with those duties.
The CSEA, the union representing the grievant who denied the charges, claims that in making daily judgments, such employees "must act not only to protect residents from themselves, but from other residents and employees as well. An employee must have the right to protect himself."

At the time, the staff-patient ratio was six males and two females to 25 patients. The arbitrator found that five males were required to subdue another resident which serves to verify that one employee's resort to subdue one resident was questionable. There was no provocation for the rough handling. Further, Mr. M.'s actions served to incite another resident, requiring intra-muscular administration of Thorazine.

The arbitrator concluded that patients have a right not to be abused; those who infringe on this right should be disciplined. The proposed penalty was found inappropriate. In mitigation of the penalty, because of the grievant's twelve years of satisfactory service, the arbitrator imposed a $100 fine, payable through four payroll deductions and ordered reassignment to the geriatric service.¹

A nurse's aide, Mary H., hired in 1976 by the Manistee Heights Care Center, in Michigan, was discharged in 1979 because she "roughly treated and hurt Ethel Johnson when transferring her from bed to chair." The patient suffered from progressive deterioration of the nervous system and had no muscle control. She died before the hearing at which it was explained how she should be moved. The grievant reportedly said she knew how or even better. On this occasion, the patient's foot slipped and, using only arm support, the grievant lifted her into the wheelchair. The patient cried and reported her arm was hurt. The grievant claimed she thought the foot blocked properly and told the patient she would be all right.

The arbitrator ruled that mental or physical abuse calling for immediate discharge comprehends more than negligent or inefficient performance. It means some intent to injure or demean. No such intent was shown here. "Accordingly under the standards established by the employer and the contractual limitation of my authority, I am constrained to find that just cause for discharge has not been shown and that the grievant must be sustained." Mary H. was reinstated with back pay.²

A resident of Letchworth Village, Irving W., was admittedly hurt by hitting his head against the cellar door while being held by Juroy H., a male aide who was suspended in January 1980 pending the hearing held in March. Conflicting testimony suggests that the patient, known to be agitated, constantly grabbing others and hitting attendants, had to be stopped while hitting another resident at a movie.

The arbitrator found discrepancies in the reports of witnesses as to concern for the protection of the resident who was allegedly deliberately abused. In the absence of definite proof, the arbitrator found poor judgment, equivalent to negligence in the manner of restraining a highly agitated resident, singlehandedly. This permitted the fall and the injury. Thus, although the aide H. mishandled W., he was not guilty to the extent charged "and the penalty of termination proposed by the State is grossly excessive." Reinstatement was ordered with back pay, minus one pay period as a disciplinary suspension.³

On November 13, 1973, Charles W., aide at Brooklyn State Hospital was charged with insulting and frightening the sister of a patient because she insisted on eye drops as prescribed for her brother. She reported to the deputy director that W. said the patient would not get the medication without doctor's orders, that he would throw her out, would like to put his fist down her throat and put his foot to her gluteus maximus, thereby frightening her. The director said, of this incident, "once is too often" and discharged the